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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,958	04/15/2004	Gerhard Lunardi	0127-092P/JAB	7460

22831 7590 04/28/2005

SCHWEITZER CORNMAN GROSS & BONDELL LLP  
292 MADISON AVENUE - 19th FLOOR  
NEW YORK, NY 10017

EXAMINER
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HESS, DOUGLAS A

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 04/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/824,958

Applicant(s)

LUNARDI, GERHARD

Examiner

Douglas A Hess

Art Unit

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Shonnard (US Pat. No. 1,868,771).

See the attached marked up copy of Shonnard figures 1 and 4 depicting the claimed features.

3. Claims 1-4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Margles (US Pat. No. 2,211,427).

See the attached marked up copy of Margles cover sheet depicting the claimed features.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Reo (US Pat. No. 6,199,678).

See the attached marked up drawing fig 2A of Reo, which is listed as prior art in the Reo patent.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Margles.

Margles teach the claimed invention as outlined above, Margles fails to teach the surface finish of his drive wheel and his reversing sheave. It would have been an obvious matter of design choice as to the type of finish that is placed on a sheave based on design characteristics of the wheels and drive belts or chains and the cost of each along with other obvious design features that are particular to a specific device. The mere claiming of a type of known material placed on a drive or friction wheel does not provide a patentable departure from that of Margles.

***Conclusion***

7. Applicant's arguments filed January 27, 2005 have been fully considered but they are not persuasive. As noted on the Margles attachment, the interpretation of the reversing wheel of Margles is the combination of the sheave 30 and the pulley 26, wherein the pulley 26 is driven peripherally. This meets the claim language "for driving the reversing sheave peripherally". The examiner further asserts that the Shonnard patent could be inherently driven peripherally.

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8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas A Hess whose telephone number is 703-308-3428. The examiner can normally be reached on M-Thurs 5:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on 703-308-2560. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3651

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Douglas A Hess  
Primary Examiner  
Art Unit 3651

4-5-05

DAH  
April 5, 2005

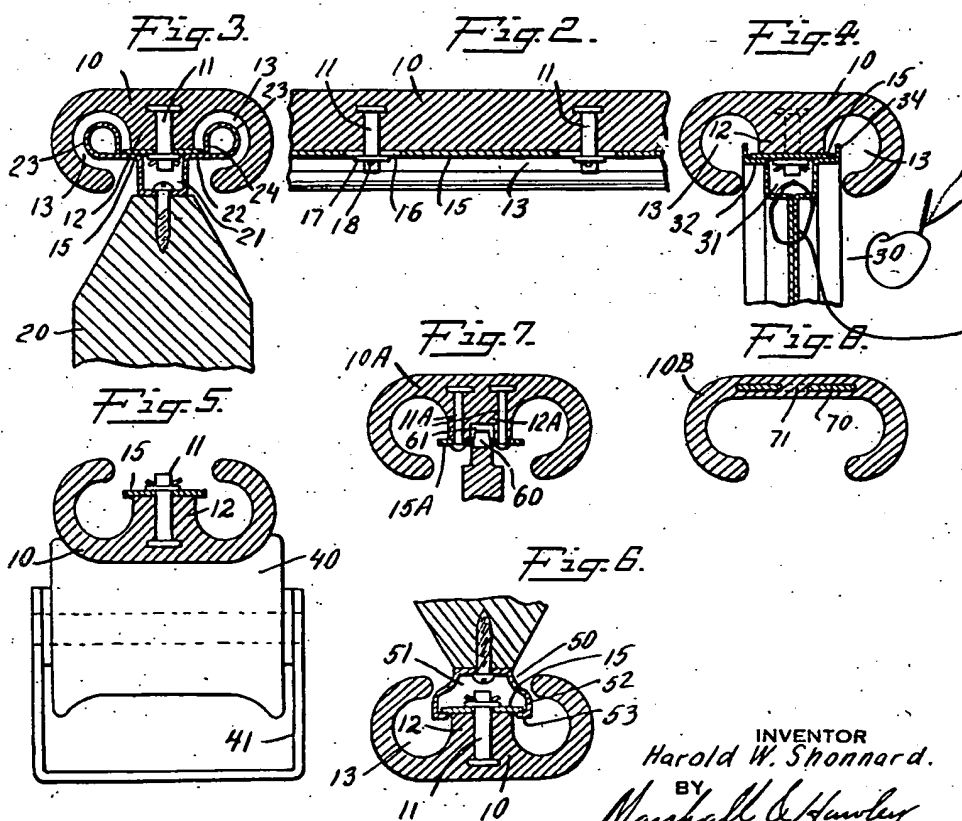
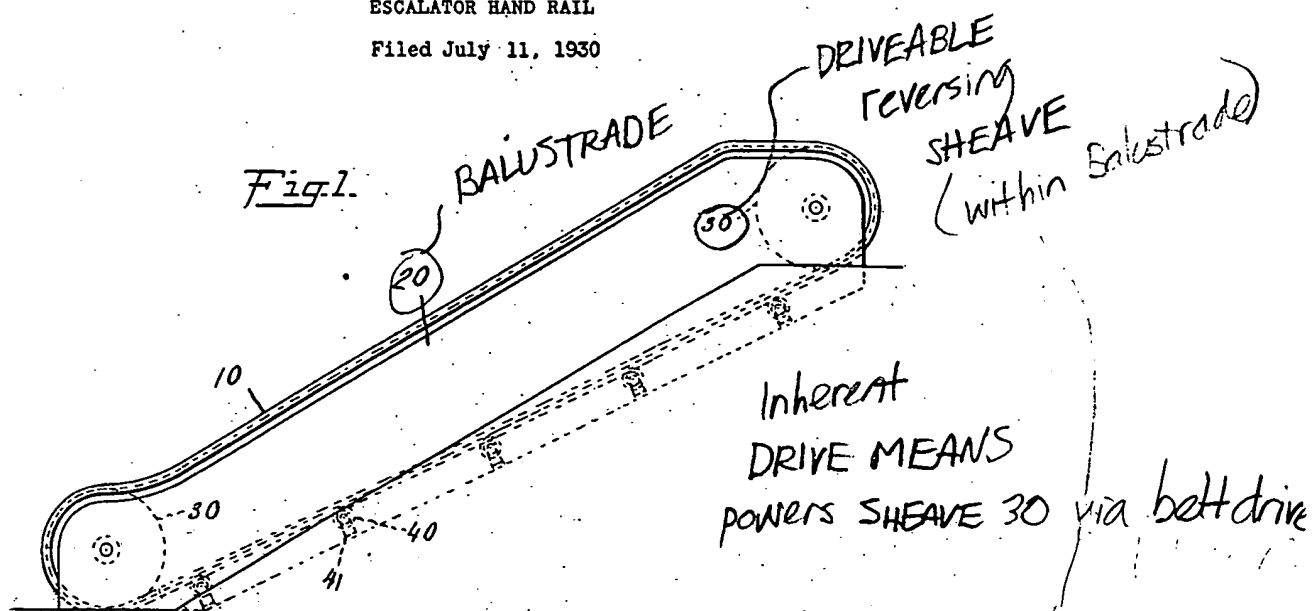
**July 26, 1932.**

H. W. SHONNARD

ESCALATOR HAND RAIL

Filed July 11, 1930

**1,868,771**



SUPPORTING  
CHEEKS

for  
SHEAVE

appears to have  
dark tinting  
by cross hatching

INVENTOR  
Harold W. Shonnard.  
BY  
Marshall & Hawley  
ATTORNEYS

26 pulley is driven peripherally

Aug. 13, 1940.

FINAL  
REJ. NOTE

S. G. MARGLES

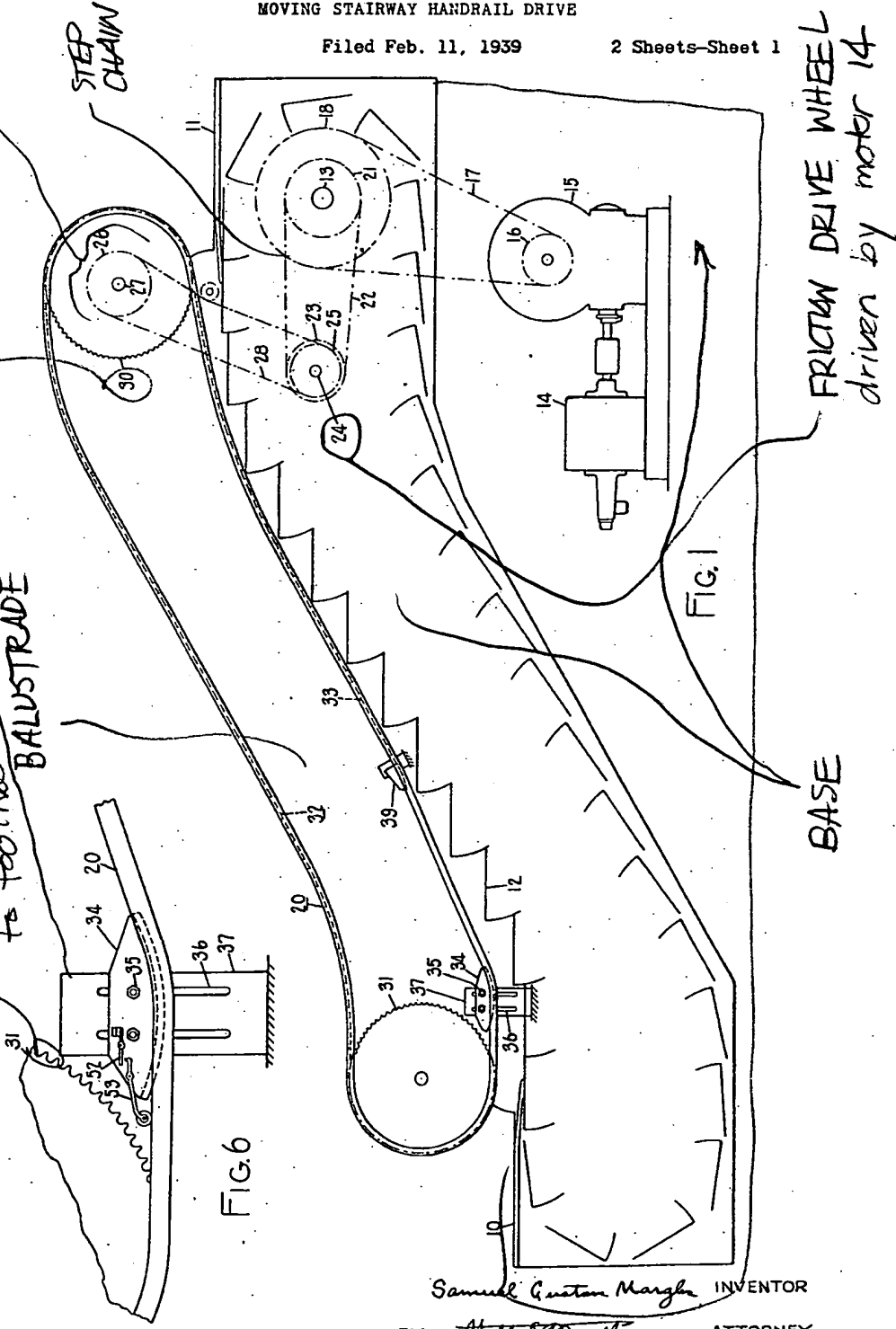
2,211,427

MOVING STAIRWAY HANDRAIL DRIVE

Filed Feb. 11, 1939

2 Sheets-Sheet 1

teeth transmits belt also for driving wheel 6  
to toothed BALUSTRADE



FRICION DRIVE WHEEL driven by motor 14

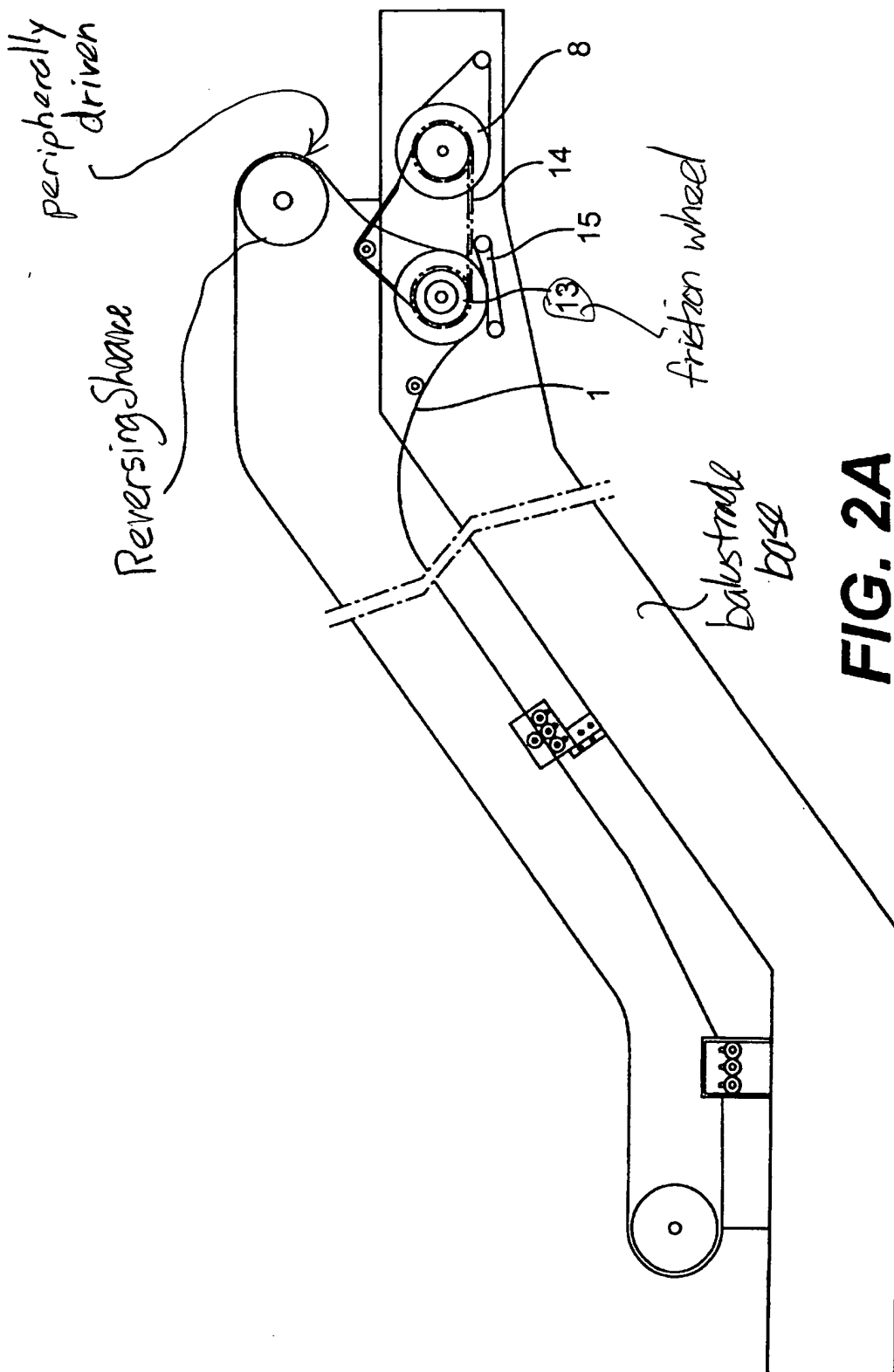
BASE

FIG. 6

Samuel Guston Margles INVENTOR

BY *Walter R. Bradley* ATTORNEY





**FIG. 2A**  
PRIOR ART